

## MEETING RECORD

**NAME OF GROUP:** City Board of Zoning Appeals

**DATE, TIME AND**

**PLACE OF MEETING:** Friday, July 26, 2002, 1:30 p.m., Hearing Chambers, County-City Building, 555 South 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS AND OTHERS**

**IN ATTENDANCE:** **Members:** Gerry Krieser, Gene Carroll and Tom Wanser

**Others:** Tonya Skinner (City Law Dept.), Rodger Harris (Building & Safety), Jason Reynolds and Missy Minner (Planning Dept.), applicants and other interested parties.

**STATED PURPOSE**

**OF THE MEETING:** Regular Meeting of the City Board of Zoning Appeals

Acting chair Gene Carroll called the meeting to order.

**City Board of Zoning Appeals No. 2335**

**Requested by John Burbach for a variance to the minimum lot area, width, and frontage on property generally located at 5250 S. Coddington Avenue.**

### PUBLIC HEARING

**July 26, 2002**

John Burbach, 1243 Claremont, appeared. He and his wife are in the process of purchasing the property at 5250 S Coddington if they can acquire the proper permits to make it a buildable lot. In 1981, this was part of a subdivision of 4 lots. Of those four lots, this is the only vacant one. When this was subdivided, it was zoned R-1. In 1982, the zoning was changed to AG. The current owner was under impression that it was a buildable lot and had the intention of building on it when he purchased it. There is no grandfather clause for this lot. It is very unusual for a property to go from high density zoning to low density zoning.

He is working with the Health Department to make sure it meets codes for wastewater. The ground has passed testing and is consistent with the ground around there. They have not been able to get formal approval, but the Health Department assured them there would be no problem. The water testing has not been done. Frank Smith of the University told him that water should not be a problem. The neighbors have good water.

The current owner purchased the property in 1993. Prior to that, the lot was owned by Mr. Hester who subdivided it.

The lot immediately to the south, which is the same size, was built on in 1983 or 1984. That owner indicated that there were some questions about whether or not the lot was buildable, but building permits were issued.

Burbach stated that they would like to build a 1500 - 1600 square foot brick ranch home. They will

probably put in a small out building. He raises pheasants, so there will be a few pens as well.

With no one further appearing, the public hearing was closed.

## **ACTION**

**July 26, 2002**

Krieser moved approval of the variance if the water and wastewater get approved, seconded by Wanser.

Motion for approval carried 3-0; Krieser, Wanser and Carroll voting 'yes'; Wibbels and Hancock absent.

### **City Board of Zoning Appeals No. 2337**

**Requested by Mark Hunzeker for a variance of sign height and area on property generally located at 5400 'O' Street.**

## **PUBLIC HEARING**

**July 26, 2002**

Mark Hunzeker appeared on behalf of Best Western /Villager Hotel. This is an appeal relative to the sign located on the Villager property east of 52 & O and near the old Cooper Theater. The widening of O Street resulted in a concerted effort on the part of the City to consolidate access points to O Street. The Villager had 4 access points, those were reduced to 3. The area of this sign previously had access on either side of the sign. The original idea was to put an access point further to the east, but then there was discussion of two alternative locations - one where the sign is today, the other would line up with the canopy on the office. It was the applicants' understanding and the understanding of the right-of-way people that the curb would not be permanently installed until they had an answer to the question of whether or not they could move the sign. In the last couple of weeks, it has been installed, so they are now facing a situation where they will either leave the sign in place next to an existing curb cut, or they may end up having to move the curb cut to line up with the office canopy. They may also move the curb cut west to line up with the drive, if they are able to move the sign.

The driveway is immediately next to the large sign and landscaped area beneath that sign. As you come in off of 'O' Street, if you intend to turn left or go west upon entering the property, it is difficult to see in that direction. It makes it very difficult and likely, over time, there will be fender benders with people moving east in that driving aisle either toward the old theater building or to parking in that vicinity and people entering off of 'O' Street. It will be a right in - right out, so there will be people coming from east to west and the left turn movement after you enter the site will be blind if the sign must be left where it is. They would like to move it to the west to line up with an island in the parking lot to make circulation safer.

There is information in the staff report talking about this being an obsolete sign. The applicants do not believe it is an obsolete sign. It doesn't fall under any category of sign that is required to be removed. It can legally stay where it is. If this variance is not approved, it will stay where it is. They feel it is better to move it from a safety perspective.

This complies with both the jurisdictional and the decision making criteria of the Board. As the Board considers this application to move the existing, non-conforming sign, it is required to decide whether or not this proposed change would make a change in the district map - which clearly it will not. It also will not

impair any adequate supply of light and air to adjoining properties, increase congestion on the public streets, increase safety hazards, diminish property values in the area. This is a situation where there is a proposed change of a non-conforming use which will facilitate a reasonable use of the property. This is an appropriate case for a variance.

The curb cut could be changed, although it is desirable to keep it as far west as possible. There is a considerable grade going west from 56<sup>th</sup> Street on O Street. In the wintertime that can be dicey. The further east it is, the closer it is to the curb cuts that are there for Amigo's and other uses just to the east. There is no deceleration lane for this curb cut.

If the sign is moved, legally it must be this sign. If the sign is changed to a different sign, it will have to comply with the existing criteria.

Krieser asked how far to the west they are planning to move it. Hunzeker explained that it is about 30' from where it is today. Krieser stated that moving it 30' to the west will make it tight with the island. Hunzeker indicated that they want to line it up with the island. It will be the same driving aisle width that they have today and will give space to see whether there is a car coming from the west in that driveway.

Carroll asked Hunzeker to address whether this is intended for a second tenant or two tenants. Hunzeker stated that he hadn't intended to speak to that because it isn't really part of this appeal. However, as far as the owners of the Villager are concerned, this sign and the building that it serves have been an integral part of the Villager complex from day one. The theater was built as an accessory and business builder for the hotel. It has always had cross advertising with the hotel. There have been cross promotional items there and with the restaurant. They believe that it is all part of the same complex. If Building & Safety determines that they are unable to use this particular structure to advertise for the hotel, they will work that out with Building & Safety.

Carroll clarified that a variance to allow additional advertising had not been requested in this variance. Hunzeker reiterated that should they end up with an interpretation question from Codes for that, so be it. The owners are very interested in getting the sign moved. They want to improve the appearance of the sign. It doesn't look very good at the moment, but the structure is sound. They would like to move it before they change the face of it.

Carroll asked why a sign of this size is necessary for a vacant building. Hunzeker stated that the sign is permitted in that zoning district and the size of the sign has nothing to do with whether the building is vacant or occupied.

With no one further appearing, the public hearing was closed.

## **ACTION**

**July 26, 2002**

Wanser moved approval with the condition that this be limited to moving this sign only and not a different sign, seconded by Krieser.

Wanser stated that this seems to be common sense bucking the code. The sign is there and it can stay

there, but it would better serve public safety if it was moved from that curb cut.

Carroll asked Skinner to address having to qualify under new sign ordinances versus using the old one. Skinner stated that §27.69 of the Code states that any non-conforming sign that is to be moved would have to conform. That means that it has to meet the proper setback and size requirements for that district. In this case, the sign is double what is currently allowed in the district. Following this ordinance, it would mean that when they move the sign, they would have to put in a 150' sign if they are going to be in that 25' front yard.

She added that there is some question as to whether or not this sign can even remain where it is at. While it is not up to the Board to decide whether or not the sign is obsolete, it is something to take into consideration. Wanser pointed out that no matter what the Board does today, that issue will remain. Skinner explained that if it is an obsolete sign, they will be required to take it down. If the sign was just obsolete, but it met the other requirements, they would be required to take it down. However, they could apply for a permit to put in another sign or move it. In this case, the sign is not only potentially obsolete, but it is also too large for the district. A proper sign in this area should be smaller.

Carroll pointed out that they are also asking for a variance of the size of the sign. Therefore, if the variance is approved, they could leave this sign which then waives the ability to make them take it down. Skinner said that it would no longer make the sign obsolete because it would have been removed but is being put up in another location. When this application was reviewed, there were questions about whether or not the same sign was being used. There are two different sizes mentioned in the report. It was unclear if it was being used for the Villager. If it is being used for the Villager, they already have their maximum amount of signage in that area. Then there is the determination of allowing them to have an additional sign to advertise their business when that isn't allowed in that district. If it is being used for the vacant building, then why is it necessary to have a 300' sign for a vacant building. Hunzeker's testimony stated that they consider this one parcel. If that is one parcel then it gets one sign. There are many issues in this one application.

Carroll asked her to then address what happens if the variance is denied and the sign is left in its existing location. Skinner indicated that if the variance for the sign or the movement of the sign is not granted, then depending on what Building & Safety chooses to do, they may take further action in enforcing the obsolete sign ordinance. That would be up to Building & Safety and is not an issue today.

She added that the Board needs to consider how many signs are allowed in the area, the size of the sign, the fact that it is already non-conforming and that according to the ordinance, if it gets moved, it should be replaced with a sign that is the proper size.

Harris stated that based on the testimony that this site is a single parcel, if the advertising on the existing sign is for the premise and not the vacant building, Building & Safety would view that as a combination sign. They already have a combination sign and only one combination sign is allowed. If the sign is used for the existing building as a separate premise, then the variance could be used for that building and not as a combination sign.

Wanser pointed out that the sign was originated for the theater to advertise movies. It is non-conforming.

If Building & Safety feels it is safety hazard that needs to come down, why hasn't that been done? Harris stated that it is not that it is a safety hazard, it is that it is a non-conforming sign. Wanser stated that it has been non-conforming for a long time. The reason this has come about is the widening of O Street.

Harris stated that it was his understanding from Clint Thomas that it was not required to be moved because of the widening of O Street. Skinner indicated that this issue came up when they came in for permission for a face change. That is when it came to light that this sign hadn't been used for several months.

Wanser was of the opinion that the vacant building plays no role in this. Skinner indicated that this sign hadn't been used to advertise the vacant space, it has been used to advertise the Villager Inn. That is where the issue of having more than the appropriate number of sign for one premise comes in.

Wanser asked Hunzeker if this is under one ownership. Hunzeker stated that it is. He added that it didn't bother the City to talk about it in terms of being one premise when it came time to consolidate the access to the site. They weren't offering to have two access points to each of these parcels.

This is a nonconforming sign. The owners understand that. All they are asking for is a permit to move the sign. In order to do that, they need to have a variance of the size, height and setback. Whether or not this is an obsolete sign and whether or not the tenancy is obsolete has nothing to do with the variance before the Board. The issue of use for advertising also has nothing to do with the variance. This is a variance to move to this sign.

Wanser asked why we have to get into the height and size issue rather than just allowing a variance to move the sign. Hunzeker explained that there is a provision of the sign ordinance that states that if you move a sign that does not conform to the requirements of the height, area and setback, if you take it down and move it when you replace it, it must meet all those requirements unless you get a variance.

Wanser asked what a variance of height, size and location does to the City's position. Skinner stated that the resolution could include language stating that it is only for the site that is in the application. That way they could only move the current sign to a new location. They couldn't put up a bigger, newer, fancier sign. The purpose of nonconforming is to let it exist for awhile, but once it is taken down it must conform. The City wants signs that meet codes.

Harris stated that there is some question about whether this variance would grant the combination sign. As he looks at this, it wouldn't grant the second combination sign. Hunzeker stated that is a totally separate issue. The applicants' view is that this sign is part of the same premise and always has been. All of these regulations came along after these signs were built. The point is that it is today a nonconforming sign and in order to move it, they need the requested variances. They have not asked for a variance to advertise the Villager hotel on this sign. It is legal to change the copy face of an existing sign structure whether it is conforming or nonconforming.

Terry Kathe, Building & Safety, stated that he has worked with signs for the last 5 years. He believes that the Board must ignore the fact that the sign is there now. Once they take the sign down, it doesn't

exist. They are asking for a size of a sign for a separate premise. If that sign comes down, they would be allowed 50 sq. ft. in the front yard or 100 sq. ft. outside the front yard. They are asking for a sign larger than that. That is the decision the Board must make. Wanser disagreed because there is a sign there and it can be left there. Kathe indicated that is a separate issue that is going to be decided elsewhere. That is not for the Board to determine. The Board is determining whether they should be allowed a sign larger than is allowed in the district.

Motion for conditional approval failed 2-1; Wanser and Krieser voting 'yes'; Carroll voting 'no'; Wibbels and Hancock absent.

This item will be held over for administrative action at the August meeting.

**City Board of Zoning Appeals No. 2340**

**Requested by James A. Krull for a variance to the rear yard setback on property generally located at 6018 Fleetwood Drive.**

**PUBLIC HEARING**

**July 26, 2002**

James A. Krull, of Krull Construction appeared on behalf of the property owner. They are requesting a variance to the rear yard setback to install a handicapped ramp, make the existing bathroom handicap accessible and add on a new bathroom and master bedroom. He has spoken with several of the neighbors on the phone and no one has indicated that they object to the project. The reason for the room addition is that three of their parents are handicapped. This is the only way to lay out the addition because any other way would make the bedroom too long.

Bruce Hunzeker, 5841 Dogwood Drive. appeared. He indicated that wasn't sure whether to appear in support of the application or in opposition. He supports the enhancement of the value of his property.

He explained that he is one of the original landowners in the area. The properties at 6018 Fleetwood Drive and 6024 Fleetwood Drive had too much dirt left in the lots when they were built. This cause water to run off into his yard and the yard at 5901 Dogwood Drive. The owners at 5901 Dogwood built the back of their property up and created an outlet that comes out by his patio. He has problems with water flooding in his house. He asked that if the Board approve the variance, they place a contingency on it that the down spouts that come off the additional roof be put underground and come out further down on the property to not increase the amount of water that comes toward his property.

With no one further appearing, the public hearing was closed.

**ACTION**

**July 26, 2002**

Krieser moved denial of the variance, seconded by Carroll.

Krieser stated that he is voting to deny this variance because it is non-conforming. He was also concerned about the potential for additional water problems for the neighbor.

Motion for denial failed 2-1; Krieser and Carroll voting 'yes'; Wanser voting 'no'; Wibbels and Hancock absent.

This item will be held over for administrative action at the August meeting.

There being no further business, the meeting adjourned at 2:30 pm.

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